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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/441,388	11/16/1999	MATTHEW ACKLEY	2043.162US1	4261

49845 7590 11/24/2006

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 11/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

09/441,388

Applicant(s)

ACKLEY ET AL.

Examiner

Roswell, M

Art Unit

2173

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 11 January 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

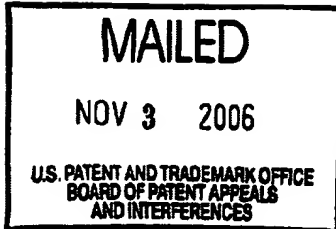
The "Summary of Claimed Subject Matter" does not map independent claims 27, 35, 38 and 46 to the specification as set forth in 37 CFR 41.37(c)(1)(v).

The "Claims Appendix" does not have a correct copy of claims 38 and 46. See attachment for details.


Toi Johnson
Appeal Center Manager

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte MATTHEW ACKLEY
and
JOSEPH APARO

Application 09/441,388

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on October 31, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below.

An examination of the Image File Wrapper (IFW) reveals that an Appeal Brief was filed on January 11, 2006.

37 CFR § 41.37(c)(1)(v) (2005) reads as follows:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

....

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 6 and 7

Appeal Brief filed January 11, 2006 is deficient because it does not map the claimed invention to the independent claims. Correction is required.

In addition, the Appendix to the Appeal Brief does not appear to contain a correct copy of claims 38 and 46. Specifically, the final paragraph of claim 38 is missing the word “presenting” (. . . by the accountholders, and wherein the steps of [presenting] present the first networked sales

interface . . .). The final paragraph of claim 46 appears to be missing the phrase "and wherein the steps of presenting present different headers for the first networked sales interface and for the second network sales interface."¹

Correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) for notification to appellants to submit a substitute Appeal Brief which corrects the "Summary of Claimed Subject Matter" and contains a corrected Appendix, particularly with respect to claims 38 and 46;
- 2) for consideration of the substitute Appeal Brief; and
- 3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: GLENN for Dale Shaw
DALE M. SHAW
Deputy Chief Appeals Administrator
(571) 272-9797

DMS:psb

¹ The Amendment submitted May 10, 2004, included an amendment to claim 46. It should be noted that the phrase in question was missing from the copy of the claims appearing in the Amendment filed March 15, 2005 even though the identifier said "Previously Presented."

Application 09/441,388

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